

FINDINGS OF ESSEX DISTRICT ATTORNEY JONATHAN W. BLODGETT
REGARDING OFFICERS INVOLVED IN THE FATAL SHOOTING ON
MAY 15, 2014 AT SALISBURY, MASSACHUSETTS

The Essex District Attorney's Office and the Massachusetts State Police assigned to the Essex District Attorney's Office have concluded the investigation into the fatal shooting of Nicholas Foster, 29, of Sherborn, Massachusetts, who was shot by Salisbury Police on Cable Avenue, Salisbury on Thursday, May 15, 2014.

Based upon a thorough investigation of the facts surrounding the shooting and the case law pertaining to the use of force to defend oneself or another, it is determined that the officers reasonably believed Foster posed an immediate threat of killing or seriously injuring them or others. The officers therefore bear no criminal responsibility for shooting Foster. Foster was armed with a machete and a knife and was confrontational during the entire incident, and officers at the scene continued to retreat while attempting to diffuse the situation.

I. Framework for the Investigation

The Essex County District Attorney's Office, by statute, has the duty and authority to oversee all death investigations in Essex County. As such, the goal of this investigation was to determine if the fatal shooting of Foster by Salisbury Police was legally justified.

A determination as to whether the actions of the involved police officers could constitute a criminal act must be considered in light of the applicable case law on the use of force by law enforcement. To be a lawful use of deadly force, the actions of the officers must be objectively reasonable, given all of the facts and circumstances confronting them at the scene. The determination of such reasonableness is judged from the perspective of a reasonable officer at the scene and in that moment in time and not through the perspective of hindsight. As stated by the United States Supreme Court, "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation." Graham v. Connor, 490 U.S. 386, 396-397 (1989).

The investigation included a review of the following: interviews with witnesses who were in contact with Foster during the time leading up to the shooting and/or who were in the area when the shooting occurred; interviews with the responding Salisbury, Newburyport and Seabrook, New Hampshire police officers; evidence found at the scene; radio transmissions; reports of the Medical Examiner, Massachusetts State Police ballistics and Crime Scene Service personnel; and a security camera video and cellphone videos made by eyewitnesses.

II. Background Information

Nicholas Foster, married 28 year old Tracie Hughes, in 2010. She has since changed her name to Alice Zombie. In May, 2014, she and Foster live at 150 Cable Avenue, Salisbury. Her father, Joseph Hughes, lived in separate apartments at the same address.

Jack Gulmire, 30, of Abrams, Wisconsin, was a friend of Zombie. He had arrived at Logan Airport on the night of May 14, 2014, and was staying at Zombie's apartment.

The police officers who responded include:

- Salisbury Police Sergeant Robert Roy, a police officer for 29 years.
- Salisbury Police Officer Michael Alder, a police officer for 30 years. He is an armorer and trainer.
- Salisbury Chief Thomas Fowler, the Chief for 20 months, after 25 years of experience as a police officer. He responded in uniform, with a badge displayed and directed his dispatcher to call for mutual aid from surrounding communities.
- Seabrook, NH Officer Justin Murphy, a police officer for 7 years. He knew Chief Fowler and Officer Adler from other mutual aid situations.

III. Factual Findings: Police respond to a 911 call on Cable Avenue

1. On May 15, 2014 at approximately 12:47 p.m., Salisbury Police received a 911 call from Joseph Hughes that police and ambulances were needed at 150 Cable Avenue: "There was a dispute; he thinks his wife was cheating on him, my daughter. He is using a knife on two people. There has been a stabbing."
2. In response to that call, Sargent Roy was dispatched from the station in marked unit 707. He was 30-40 seconds from 150 Cable Avenue. On that street, he saw a red car driving straight at him. Sargent Roy was forced to "jerk" the wheel to avoid a head-on collision. The red car almost hit him. He radioed Officer Michael Alder, a short distance behind, to stop the red car. He then saw the red car drive head-on into Officer Alder's cruiser. Sergeant Roy turned around and drove to the collision site.
3. Meanwhile, Officer Alder, in marked unit 705, also called in to the station that he was responding to the dispatch to 150 Cable Avenue. On Cable Avenue, he saw Sargent Roy in marked unit 707 near the end of the street. He saw Sargent Roy brake lights illuminate and then he received Sargent Roy's radio transmission to stop the red car. By that time, the red car was heading toward him so he swerved to the right, but the car hit him almost head on. The airbags deployed, his legs were pinned and he was dazed. Eventually he pulled himself out from the passenger side. The operator of the red car was Foster; neither Officer Alder nor Sargent Roy knew him.
4. When Sargent Roy saw a woman (late identified as Fiona McClelland) go near the car, he yelled at her to get away from it. He also saw other people nearby and motioned for them to get away from the area. In the red car, he saw the operator with

a machete in his left hand and a knife in his other hand. He was concerned for the safety of himself, other officers, and people in the area.

5. Officer Alder saw Foster come out of the red car, with a machete in the air yelling, “Kill me, kill me now.” The officer then saw that Foster was also holding a knife and he alerted Sargent Roy. Meanwhile, Sargent Roy saw Foster get out of the car with blood on his hands and t-shirt. He had a crazed look in his eyes. He squared off with Sargent Roy and said, “Injuries as a result of accidents are overrated. I am hardly even injured.” He then held up his arms and said, “Shoot me. Go ahead, I give you my permission to shoot me.” Officer Alder kept asking him for his name and telling him that all was going to be okay. Also, Officer Alder transmitted that he was engaged with a man with a knife. After officers transmitted a request for assistance, Amesbury, Seabrook and Newburyport police, Massachusetts State Police, Atlantic Ambulance, Salisbury Fire Department and Amesbury Ambulance were en route.
6. Repeatedly, the officers told Foster to put the weapons down, asked him what his name is, and told him that all would be okay. The officers backed up as Foster kept advancing toward them. He said his name was Nico and that “[i]t is too late for that now. You have to kill me.” He started in Officer Alder’s direction and then started in Sargent Roy’s direction, while they continued yelling at him to put the weapons down. Both officers’ guns were drawn. Sergeant Roy attempted to calm Foster down. He then backed up around his car, step by step with Foster, who continued to brandish the machete and the knife. As this continued, Sargent Roy attempted to retrieve a rifle from his cruiser, but was unsuccessful.
7. Meanwhile, Salisbury Police received a 911 call from Fiona McClelland reporting that a man was confronting two officers with two knives and that “he was not giving up.”
8. Chief Thomas Fowler heard in various dispatches that a knife was involved, a car had attempted to hit an officer, additional units were needed, and the situation was a standoff. He arrived on the scene with an AR-15 patrol rifle in the trunk vault of his vehicle. He saw the collided vehicles and Foster with a large machete in one hand over his head and a knife in the other hand; he yelled to Foster to put the weapons down. Officer Alder’s gun was drawn.
9. Chief Fowler retrieved the AR-15 from the trunk vault. He heard Foster yelling, “Go ahead shoot me.” Foster walked toward the officers; they backed up. Chief Fowler attempted to engage him in conversation by asking his name and what the issue was. Foster responded that he “wasted five years of [his] life.”
10. When Seabrook, N.H. Officer Murphy arrived at Cable Avenue, he saw a “big burly guy” waving a machete and a knife. He saw Chief Fowler with a rifle and Officer Alder with his gun out, yelling, “Drop the knife, drop the knife.”

11. Foster's demeanor and facial expression changed and he became more aggressive and enraged. Officer Murphy had his rifle out, but saw Sargent Roy in a position that might be in crossfire, so he repositioned himself between the Chief and Officer Alder, all the time commanding Foster to drop the knives. They backed up as Foster walked toward them. They continued to give Foster considerable space.
12. A standoff continued; the Chief saw Foster walk at the officers who were backing up. Foster continued to yell, "Shoot me, shoot me." As the Chief became aware of the presence of Seabrook Officer Murphy, he asked if the officer had a Taser and then directed him to deploy it at any time because Foster was not going to stop.
13. Officer Murphy's Taser had a twenty-five foot wire. He drew the Taser and Foster said, "Fuck you. You are not going to tase me. Kill me. Kill me now." Officer Murphy yelled "Taser" to alert people and then deployed the Taser. One prong missed or made poor contact, because it appeared to have little effect on Foster. Foster immediately charged at them with the machete raised in the air and was very close, six to ten feet from the officers.
14. Officer Murphy retreated.
15. Chief Fowler and Officer Alder each fired two shots. Foster went down.
16. Sargent Roy heard the gun fire. At approximately 1:03 p.m., he reported over the radio that shots had been fired.
17. Sargent Roy saw two ambulances down the street that were responding to a double stabbing at 150 Cable Avenue. He kept radioing for medical help at his scene.
18. Officer Alder also requested an ambulance "pronto" and then he transmitted that he needed it "now" and then he requested its status. He was informed that both of the ambulances were engaged at 150 Cable Avenue and that Amesbury Ambulance was en route.
19. Meanwhile, Officer Murphy kicked the machete and the knife away and patted down Foster for weapons.
20. Meanwhile back at 150 Cable Avenue, paramedic Bob Piepiora of Atlantic Ambulance and Kelby Groder of the Salisbury Fire Department, who had assisted in removing Zombie from her home, were informed of another patient down Cable Avenue. They ran down the street and approached Foster, who was face down in the road. A large pool of blood was flowing from his chest area and no pulse was detected. They rolled Foster onto his left side. Piepiora determined that Foster could not be resuscitated, as there were obvious signs of death: major chest trauma, loss of blood, and he was unresponsive. They rolled him back to the prone position.

21. Sergeant Roy saw a neighbor with a phone and assumed the event was being recorded. Later, Sargent Roy recovered the black iPhone from a neighbor who had recorded the incident.
22. After the scene was secured, the Chief directed Officer Brian Smith and Sargent Roy to take Officer Alder back to the station. Officer Alder surrendered his weapon to Salisbury Lt. Tony King.
23. Officer Murphy's supervisors, a Deputy Chief and Lieutenant from the Seabrook Police Department, arrived on scene. Officer Murphy was taken to the hospital and released.
24. Officer Murphy's Taser was left at the scene. His firearms were a Sig 226 with .357 rounds and an AR-15 rifle, neither of which was fired.
25. Because the suspect was armed, the Chief was concerned for the safety of the other officers, himself and people in the area. Officer Alder was in fear for his life and for other officers and people in the area. His impression is that Foster wanted to die because he would not put the weapons down and was saying that they would have to kill him. Seabrook Officer Murphy's impression of Foster was that he wanted to die and wanted to take someone with him, that he was not in his right state of mind. Officer Murphy was concerned that Foster was going to do something. He thought Foster may have said, "Just shoot me." He was in fear for his life and the lives of the other officers.

IV. Factual findings: The scene at 150 Cable Avenue before the shooting

26. Earlier that afternoon, Zombie was at home, watching a movie in her bedroom, when Foster came in fast and was hitting Gulmire. She then realized that Foster was stabbing her. Gulmire pleaded for Foster to stop. She does not remember what happened after that because she passed out.
27. Meanwhile, Joseph Hughes arrived home at the same time as Foster. Hughes was entering his apartment when he heard yelling. He went to the door of his daughter's apartment and saw Gulmire, bleeding. Hughes went into Zombie's apartment and grabbed Foster, who had two knives that he had taken from the kitchen. He then ran down the stairs, followed by Foster. He grabbed a baluster to protect himself. He told Foster that he had lost his mind. Foster said that Zombie was cheating on him. Hughes explained to Foster that Gulmire was just staying over and that Hughes would put him in a separate sunroom, if it would make Foster feel any better about it. Foster "just flipped out." Hughes said, "You knew that this was going to happen. Nicholas put the knives down." Hughes told him to get out of there. Foster got in his car and raced down Cable Avenue.
28. At the time, Hughes was unaware that anyone was badly injured. He then saw Gulmire bleeding, so he laid him on the floor and called 911. Hughes then went to

- his daughter, who was also bleeding, and he applied pressure to her wounds. She was in shock, her eyes were glossed over. Police, fire and paramedics arrived and took over providing medical care.
29. Kelby Groder is a 13 year veteran of the Salisbury Fire Department and is qualified to treat for Basic Life Support. He responded to the 150 Cable Avenue injury call with Lt. Doyle and was met by an elderly man who told them that someone was inside who had been stabbed. Inside the doorway was a man who identified himself as Jack, with several stab wounds to his chest and abdomen. The second victim was a female, unconscious, with stab wounds. It became a priority to get her out of the house and into an ambulance, which he did with Bob Piepiora, a paramedic, and Scott Burkenbush, both Atlantic Ambulance personnel. A second medical truck took the male patient, Jack Gulmire, to the hospital.
 30. Bob Piepiora has been a paramedic for Atlantic Ambulance for 4 years. He responded to the stabbing call at Cable Avenue with Scott Burkenbush. Upon arrival, he saw two stabbing victims, a male and a female. A Salisbury firefighter helped him take the female victim out of the house and into an ambulance.
 31. Zombie suffered many stab wounds: to an artery in her arm; her abdomen; an artery behind the stomach; the bile duct going through her liver; and the vein going through her spleen.
 32. Gulmire was airlifted to Mass General Hospital. He sustained fourteen stab wounds, including three to the chest; one to the stomach; two to his side; one to the back; one to the leg; his hand is mangled.

V. Further findings of the investigation:

33. According to Hughes and Zombie: Foster was mentally disturbed and suicidal; he had talked about his suicide being dramatic and final; he does not like people telling him what to do or pushing him into things; he is on medication (anti-depressants and medication for anxiety), although Zombie was not sure if he was taking his medication; he and Zombie spoke of Foster getting help for his mental state; his doctor is in Amesbury. Foster and Zombie's relationship was troubled because of his anger issues and there had been confrontations before, but nothing physical; he was never violent toward her and would leave her rather than hurt her. He would not argue, choosing to leave and go for a drive instead. He was writing, but had bad bouts of depression for long periods of time. He was into martial arts and she thought he kept knives in his car.
34. Zombie last saw Foster the previous Sunday or Monday when he left to dog sit at his mother's house. While he was dog-sitting, she texted him that Gulmire would be in town. She was afraid of Foster's reaction to having someone at her apartment when Foster was not there. Zombie told Foster that he need not be worried about Gulmire staying overnight at her house because she would never leave Foster and did not have

a relationship with Gulmire beyond being friends. She believed Foster thought that she and Gulmire were involved in a relationship, however, and Foster had text messaged her commenting on sex.

VI. Other witness statements:

35. Jack Gulmire: On the day of the stabbing, Zombie said told him she was getting angry text messages from Foster. Gulmire heard someone arrive and thought it was Zombie's father, but it was Foster. Zombie looked scared. Foster had his hand on Gulmire's chest. Gulmire saw a blade come out and blood, and then Zombie being stabbed several times. Foster screamed, "You are cheating on me." Gulmire yelled at him, "What are you doing? You have to leave me alone. I have a little kid at home." Foster was staring at them and said, "I know." Foster started stabbing Zombie in the stomach. Gulmire attempted to stop him, but "gashed up his hand." Gulmire heard Hughes on the other side of the door, pounding on the door, but Foster had locked it. Gulmire got around him, but Foster stabbed him in the thigh and back of the shoulder. Gulmire got the door open, went past Hughes, down the steps with Foster chasing him, and into the bathroom, which he locked. Foster pushed open the door, breaking it off the hinges, and Gulmire saw him with a big kitchen knife, swinging it in the doorway. Gulmire yelled for Hughes to call 911. The commotion stopped and Hughes told Gulmire to come out of the bathroom and laid him on the floor until paramedics got there. His injuries are described above.

36. A neighbor who lives on Cable Avenue heard the collision and approached the red car to inquire if the driver was injured. She saw Foster reaching in the back of the vehicle, as if he was simulating pulling a gun. She was immediately cautioned by Sargent Roy to get away from the vehicle. She retreated, but was able to observe Foster get out of his vehicle wielding two knives, one of which was like a machete. He looked crazed and was talking to himself. She heard the officers yelling for him to put the weapons down. He said, "Come on shoot me. Shoot me." He continued to walk toward the officers, circling them and displaying threatening behavior. She then called 911, because she felt that the officers were not safe and needed help.

V. Other evidence:

37. Two painting contractors were working on Cable Avenue when they heard the car crash and then saw officers with guns drawn. One used his cell phone to record the incident. The recording consists of six still photos and video for 6 minutes, 34 seconds.

38. Another witness used his cell phone to film 3 videos: 3 minutes, 12 seconds; 1 minute, 23 seconds; and 8 minutes, 5 seconds long.

39. The home surveillance system at a Cable Avenue residence captured video of the incident consisting of 10 videos over 8 channels from 3 angles, ranging from 27 minutes, 42 seconds to 32 minutes, 21 seconds.

40. Numerous witnesses were interviewed. Their accounts are all similar in detail and consistent with the evidence depicted in the videos.
41. An autopsy was conducted at the Office of the Chief Medical Examiner by Dr. Peter Cummings. He determined that the cause of death was gunshot wounds to the right neck, left leg and left flank. He noted Taser marks to the left arm.
42. Toxicology results have not been received.
43. Massachusetts State Police Crime Scene Services and State Police Ballisticians recovered two .40 caliber and two .223 caliber discharged cartridge casings; a Taser door; a machete with a 35 inch blade; a knife with a 7 inch blade; and the Salisbury Police Ford marked unit 705 and Foster's red Toyota Camry, both of which sustained significant front end damage.

CONCLUSION

This matter is now referred to the Salisbury Police Department for whatever internal administrative review is deemed appropriate.